should be given. This passage was approved by the Privy Council in the *Montreal Trust Company* v. *The British Columbia Land and Investment Agency Ltd.*, [1936] M.L.J. 75, 78; *supra*, pp. 59, 62.

Prior to the passing of the Land Code in 1926 exactly the same principles were recognised in the case of registered land in the Federated Malay States; section 32 of the Registration of Titles Enactment, 1911, providing that the transferee of land subject to a charge is under an obligation to indemnify his transferor, the original chargor, but establishing no privity of contract between the transferee and the original chargee.

There is nothing illogical in this position. A person who lends money on the security of land relies, firstly, on the personal covenant of the borrower, and secondly, upon his remedies against the land itself. If the proprietor transfers the land subject to the charge, the security of the original chargee is not affected. There is no reason why he should expect to obtain as an additional security the covenant of the transferee who is introduced without his consent, and merely by virtue of an arrangement which is entirely a matter for the transferor and the transferee. The transferor, however, having received a reduced purchase price in consideration of his having transferred the land subject to the charge, is naturally entitled to be indemnified by the transferee against his liability to the original chargee.

Section 111 of the Land Code effected an important change, and as a result the transferee is made directly liable to the original chargee "so long as the transferee shall remain the proprietor" — in other words, privity of contract is established by statute between the transferee and the chargee in circumstances where no such privity had previously existed. When a person is put under a statutory liability from which he was previously free, it is an elementary canon of construction that such liability should not be extended beyond the express words of the statute (see *Maxwell's* Interpretation of Statutes, 7th edn., p. 71).

In the present case there can be no dispute that the second defendant ceased to be the 'proprietor' when the plaintiff bought the land at auction, and registered himself as the proprietor. Thereupon the obligation imposed in certain circumstances upon the second defendant, as transferee of land subject to a charge, ceased, as the statutory condition, under which alone such obligation was imposed, was no longer operative.

The suit is, therefore, misconceived and must be dismissed with costs.

Suit dismissed.

YEOH KOON BAH v. PUBLIC PROSECUTOR

[A. Cr. J. (Pedlow J.) June 5, 1936]
[Selangor Magistrate's Criminal No. 27 of 1936]

Motor Vehicles Enactment (Cap. 168), s.44 — Whether applicable to motor vehicles licensed outside the Federated Malay States.

The words "or being licensed" in section 44(i) of the Motor Vehicles Enactment (Cap. 168) refer only to licences under the Enactment and issued in the Federated Malay States. They have no reference to licences issued outside the Federated Malay States.

Accordingly, the owner or driver of a lorry licensed in Johore cannot be convicted in the Federated Malay States for failing to comply with the terms and conditions of a Johore licence.

Tan Teow Bok for the appellant.

C. H. Whitton (Deputy Public Prosecutor) for the respondent.

[259] **Pedlow J.:** In the Court of the First Magistrate, Kuala Lumpur, the appellant had been charged, *inter alia*, as follows:— [259]

"That you on or about 27.2.36 at 5 a.m. at Cheras Road did fail to comply with the conditions of your motor lorry Johore licence No. 2258 by carrying excess load of 10½ cwts. Section 44(i) (Cap. 168), Motor Vehicles Enactment."

The appellant had pleaded guilty and had been fined $50 or one month's rigorous imprisonment, and had appealed against sentence only as provided by section 305, Criminal Procedure Code.

During the course of the hearing of the appeal the Court raised the point whether the Motor Vehicles Enactment or the rules made under it really created the offence charged and adjourned the appeal for argument of this point.

On resumption, after hearing the learned Deputy, the Court held that the conviction was illegal and for the following reasons:—

Section 13 of the Motor Vehicles Enactment — the Enactment under which the appellant had been convicted — states that a motor vehicle may, if it is registered or licensed under any law relating to motor vehicles in any State specified in the schedule, be used on the public thoroughfares of the Federated Malay States so long as such registraction (sic) remains in force, without being licensed under this Enactment. The Enactment does not make it very clear whether registration and licensing are one and the same process or two distinct processes but it does seem to imply, which I hold to be the case, that a vehicle cannot be registered without being licensed and *vice versa*. Now it was admitted that the appellant's lorry at the time of the alleged offence was licensed in Johore — a State specified in the schedule — being the holder of Johore licence No. 2258 and that that licence was still in force in that State. Therefore we start from this position that on the date in question the appellant's lorry was not licensed in the Federated Malay States and that it was no offence, in view of section 13, to use the lorry on the roads of the Federated Malay States.

The next point for consideration was whether it was an offence under the Enactment to use the lorry in the Federated Malay States otherwise than in conformity with its Johore licence, and that in turn depended on the proper construction of section 44, subsection (i) and in particular of the words "or being licensed." It was suggested that these words meant "or being licensed in the Federated Malay States, the Colony or in a State specified in the schedule," but I know of no canon of construction which would permit this view to be accepted. The Enactment is penal and must be strictly construed. When a licence is spoken of it must be construed, in the absence of

qualifying words or express provision to the contrary, to mean a licence under the Enactment and issued in the territory to which the Enactment applies, viz. the Federated Malay States. A moment's reflection would show that any other construction would speedily lead to an absurd position as, e.g. if the Johore licence contained requirements, e.g. compulsory third party insurance, which were not necessary in the Federated Malay States themselves.

The trouble about section 44(i) seems to be that it is not comprehensive enough, i.e. that it does not enumerate all the classes of motor vehicles which may be found on a public thoroughfare. It enumerates two classes only, the two obvious classes, and overlooks the third or special class created by section 13.

On the above construction of section 44(i) the appellant's conviction was clearly illegal. I therefore requested him, in view of section 305 of the Criminal Procedure Code and of the ruling in *Philip Hoahlim* v. *Public Prosecutor,* [1935] F.M.S.L.R. 207; [1935] M.L.J. 25, to withdraw his appeal, which he did, to deal with the matter under the powers of revision conferred by section 325 of the Criminal Procedure Code.

Under those powers I quashed the conviction and sentence and ordered the fine, which had been paid, to be refunded.

The sentences on the other charges appealed against were confirmed.

CHETTINAD BANK, LTD. v. CHAH BINTI HAJI MOHAMED AMIN

[A.C.J. (Howes J.) June 19, 1936]
[Perak Civil Application No. 8 of 1936]

Land Code (Cap. 138) — Charge containing no agreement to pay interest after due date — Reduction of principal by amount of interest paid after due date.

The respondent borrowed $3,000 from the applicants and on the 30th May, 1932, executed a charge in their favour by which she undertook to repay that sum on the 30th May, 1933, and in the meantime to pay interest at 12 per cent. per annum by equal monthly instalments of $30. The charge contained no agreement to pay interest after the 30th May, 1933, but in fact the respondent paid $960 after that date by way of interest and this sum was appropriated by the applicants towards interest.

At the application by the applicants for sale under the charge, the Collector decided that this $960 should be treated as repayment towards principal and accordingly made an order for sale to recover $3,000 less $960, i.e. $2,040 and costs.

Held: on appeal, that the respondent had voluntarily, under a mistake of law, continued to pay interest after the 30th May, 1933. Therefore the applicants were entitled to appropriate the payments so made towards interest and the Collector was wrong in treating such payments as a reduction of the principal sum.

S. Seenivasagam for the applicants.

Respondent absent.

Cur. Adv. Vult.

[260] **Howes J.:** This is an application under section 237(iii) of the Land Code (Cap. 138) against the decision of the Collector of Land Revenue, Lower Perak, by which he ordered the sale of certain lands subject to a charge for the recovery of $2,040 and costs. The respondent-chargor has not appeared, so presumably does not oppose the application.

The facts are as follows:—

The chargor borrowed $3,000 from the chargees, and on 30th May, 1932, executed a statutory charge in their favour by which she undertook to repay the sum of $3,000 on 30th May, 1933, and in the meantime to pay interest at 12 per cent. per annum by equal monthly payments of $30. The chargor made default in repaying the principal on 30th May, 1933, but continued to pay interest until 29th January, 1936. The amount paid as interest up to that date was $1,320.

These payments were made by the chargor voluntarily, as interest, at the rate mentioned in the charge, and were appropriated by the chargees-applicants towards interest.

On the 28th February, 1936, the applicants applied to the Collector of Land Revenue for an order for sale under the provisions of the Land Code.

The charge contained no agreement to pay interest after the date fixed for repayment of the principal, viz., 30th May, 1933.

The Collector, in view of the decision of the Court of Appeal in *Arumugam* v. *Leonard,* [1936] F.M.S. L.R. 1; [1936] M.L.J. 252 (*supra,* 201) (which decided that in the absence of a stipulation in a charge to the contrary, interest thereunder ceased on the day on which the principal was repayable) was of opinion that the sum of $960 paid by the chargor as interest after the date for repayment of the principal, viz., 30th May, 1933, should be treated as repayment of the principal and should not be regarded as a payment of interest. Consequently, he reduced the amount of the principal sum (in respect of which the sale of the lands was ordered) to $3,000 less $960, i.e. $2,040 and costs.

The Collector had been informed of the result of the decision of the Court of Appeal by S.C. Circular No. 1 in R.S.C. 16/36 dated 15th January, 1936, but had not had the advantage of reading the judgment of that Court. He was evidently of opinion that that decision justified him in reducing the principal sum by the amounts paid as interest after the 30th May, 1933.

Whilst, following the above decision, the obligation to pay interest ceased on 30th May, 1933, since the chargor, (possibly under a mistake of law) voluntarily continued to pay interest, these payments were in fact payments of interest, and not repayment of the principal sum. Credit has been given by the chargees in their accounts for these sums as interest, and any subsequent claim for interest would necessarily be reduced by these amounts. Money paid under a mistake of law cannot be recovered by the payer, and the chargees were entitled to appropriate the sums paid towards the reduction of their claim to interest.

For this reason, I hold that the Collector was wrong in reducing the principal sum by the amounts paid as interest after the date fixed for repayment of the principal. That sum remains unchanged and is